UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

COUNTRY FRESH, L.L.C., a wholly owned subsidiary of DEAN FOODS COMPANY[1]

Employer

and **CASE 7-UC-582**

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO and its NEW WEST SIDE LOCAL 174

Petitioner

and

LOCAL 337, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Intervenor

APPEARANCES:

Patricia Costello Slovak, Attorney, of Chicago, Illinois, for the Employer
Catherine J. Trafton, Attorney, of Detroit, Michigan, for the Petitioner
Gerry M. Miller, Attorney, of Milwaukee, Wisconsin, for the Intervenor

DECISION AND ORDER

Upon a petition duly filed under 9(b) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[2] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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[1] The name of the Employer appears as amended at the hearing.
[2] All parties filed briefs, which were carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.

Overview

The Employer produces, processes, and distributes dairy products to grocery stores, convenience stores, other retail outlets, and institutions. It has plants in Grand Rapids, Flint, and Livonia, Michigan. Its Livonia facility is involved in this proceeding. In June 2003, the Employer's parent company, Dean Foods, purchased Melody Farms, L.L.C., also a producer and distributor of milk and dairy products with several plants in Michigan. In 2004, Dean Foods consolidated operations between the Employer's Livonia facility and Melody Farms' two Detroit area locations.

The Petitioner, also referred to as UAW, currently represents a unit of approximately 172 production and maintenance employees, and truck drivers at Country Fresh's Livonia facility. It seeks to accrete approximately 19 milk drivers who are employed by Melody Farms and are members of a unit of milk and ice cream drivers represented by the Intervenor, also referred to as IBT. The Employer argues that the Melody Farms milk drivers are not an accretion to the Petitioner's unit. It also contends that all the milk drivers should be in one bargaining unit. The Intervenor argues that accretion is not appropriate and a question concerning representation has been raised. In the alternative, it contends that if the Board finds an ***Armour-Globe***[3] election appropriate, it should be held in a unit comprised of the Country Fresh milk drivers and the Melody Farms milk and ice cream drivers, excluding switchers and other plant employees. The Petitioner responds that such an election is not appropriate.

I find that the consolidation of the Country Fresh-Livonia and Melody Farms facilities has resulted in a new operation, thus creating a question concerning representation and making accretion inappropriate. Further, no representation petition has been filed. Thus, the direction of an election in any unit is not possible.

The Consolidation

Both Country Fresh and Melody Farms produce and distribute dairy products in Michigan. Melody Farms operates two facilities in the Detroit area: an ice cream production and distribution plant located in Detroit and a dairy distribution facility located on Industrial Road in Livonia, about a mile from the Country Fresh Livonia facility on Enterprise Drive. Dean Foods, in order to increase operating efficiency and

[3] ***Armour and Co.***, 40 NRLB 1333 (1942); ***Globe Machine and Stamping Co.***, 3 NLRB 294 (1937).

reduce duplicative delivery routes, decided to consolidate Melody Farms and Country Fresh-Livonia. Country Fresh and Melody Farms continue to exist as separate and distinct corporate identities within the Dean Foods corporate umbrella.[4] However, in the Detroit area, the Melody Farms brand is being used and the Country Fresh brand has been eliminated.

Prior to Dean Foods' purchase of Melody Farms, the Melody Farms milk drivers began and ended their workdays at the Melody Farms facility on Industrial Road, where they punched in and out, picked up and returned paperwork, and picked up and parked their tractors. Because Melody Farms distributes, but does not produce, milk at its Livonia facility, the milk drivers drove their tractors in the morning to Michigan Dairy, a Dean Foods competitor, and picked up trailers loaded with milk products for delivery. At shift-end, they returned the trailers to Michigan Dairy. The ice cream drivers reported to and worked out of the Detroit facility.

Dean Foods began to consolidate some functions soon after the Melody Farms purchase. In September 2003, Dean Foods consolidated ice cream warehousing and distribution operations that had been performed by both Country Fresh and Melody Farms at Melody Farms' Detroit facility. No driver represented by the Petitioner was transferred to the Detroit facility as a result. In addition, Melody Farms began picking up milk for its deliveries from the Country Fresh-Livonia facility, rather than from Michigan Dairy. All other aspects of their workday remained the same. Melody Farms and Country Fresh milk drivers continued servicing their own separate, sometimes overlapping, routes.

In January 2004, Dean Foods announced it would consolidate the milk distribution systems of the two Livonia facilities, thus eliminating overlapping routes. Dean Foods' first attempt at consolidation required the Melody Farms milk drivers to report to Country Fresh. A March 24, 2004 agreement between the Petitioner and the Employer[5] delineated the terms of the consolidation: Melody Farms milk drivers would become UAW members and be "end-tailed" into the Petitioner's unit for route bidding and layoff purposes.[6] Country Fresh and Melody Farms drivers bid on the new, merged milk routes in April. The new, combined routes became effective on May 3, and all drivers began reporting to the Country Fresh facility to clock in, get their paperwork, and pick up their tractors and loaded trailers. IBT drivers did not become members of the UAW as required by the Petitioner's agreement with the Employer because, in response to this consolidation plan, the Intervenor filed a grievance against Melody Farms on March 29, for breach of its collective bargaining agreement. Arbitration was held in May and the

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[4] Both Country Fresh and Melody Farms are owned by an intervening corporate entity, Dean Midwest II.
[5] The Intervenor did not sign this agreement.
[6] Under the end-tail seniority plan, the Country Fresh/UAW drivers bid first for milk routes; the Melody Farms/IBT drivers bid last. In the event of a layoff, Melody Farms/IBT drivers, regardless of seniority, would be laid off before any Country Fresh/UAW driver. Seniority for vacation accrual and other benefits would not be affected.

arbitrator issued a decision on June 28. He sustained Intervenor's grievance and required the Employer to reassign the Melody Farm drivers immediately to their prior routes and to continue performing those operations subject to the terms of the Intervenor's collective bargaining agreement in all respects.

Following the arbitrator's decision, the Employer reconfigured its consolidation plan. After discussion with both unions, on July 30, it announced its intention to consolidate distribution at the former Melody Farms facility on Industrial Road under the Intervenor's contract. To accomplish this, the Employer stated that all drivers under the Petitioner's contract would be laid off. They would then have two options to continue employment: 1) they could use their seniority to bump into production and maintenance classifications in the Country Fresh plant, or 2) they could choose to be employed as Melody Farm drivers under the Intervenor's contract.

The Employer's consolidation agreement with the Intervenor allowed UAW members to "dove-tail", rather than end-tail their seniority with IBT members. A new route selection bidding process was held on September 1 and 2, with all drivers bidding from a merged seniority list. Beginning September 13, shortly after the hearing in this matter closed, all milk drivers were to report to the Melody Farms facility to clock in and get their paperwork and tractors. They will then drive the tractors to the Country Fresh facility to pick up their loaded trailers for delivery and begin their routes. At the end of the day, they will drop off the trailers on Enterprise Drive, and then return to the Industrial Road facility to complete their paperwork and clock out. However, as a result of pending UAW grievances and the instant proceeding, the Employer, while merging the delivery routes and dove-tailing the seniority lists for the purposes of route bidding, has kept the Melody Farms drivers under the Intervenor's contract and the Country Fresh drivers under the Petitioner's contract. Ice cream delivery drivers continue to report to the Melody Farms facility in Detroit.

The Units

The Petitioner's bargaining unit is:

> All full-time and part-time production and maintenance employees and truck drivers employed at the Employer's facility located at 31770 Enterprise Drive, Livonia, Michigan; but excluding all professional employees, confidential employees, sales employees, laboratory employees, office clerical employees, guards and supervisors, as defined in the Act.

The Petitioner has represented those employees since about 1987. The current contract between the Employer and the Petitioner is effective from October 12, 2002, through October 13, 2007. It covers approximately 172 employees, of whom approximately 34 are drivers.

The Intervenor's bargaining unit is:

> All full-time milk and ice cream driver/salespersons, employed by the Employer at its 31111 Industrial Road, Livonia, and 1000 Maple, Detroit, Michigan facilities, but excluding all other employees, guards, and supervisors as defined in the Act.

The Intervenor has been the collective bargaining representative of that unit since at least 1982. In January 2004, the Intervenor's unit was comprised of 56 employees, 28 of whom were assigned to the Melody Farms Industrial Road facility for the distribution of milk products. The remaining 28 were assigned to the Detroit ice cream facility. As of September 7, the unit had been reduced to 50 drivers, 19 in milk delivery and 31 in ice cream. However, in practice, three to four drivers on the ice cream seniority list regularly drive milk routes. The most recent contract between Melody Farms and the Intervenor was effective from July 16, 1999, through July 5, 2004, and was recently extended until November 1, 2004.

Driver Duties

Country Fresh and Melody Farms drivers perform the same job duties – delivering milk or ice cream to institutional and retail customers. Although historically Melody Farms drivers had more "peddle" deliveries and Country Fresh drivers had more "call-in" deliveries,[7] all milk delivery drivers are able to make both types of delivery. Trucks used include tractor-trailers and straight trucks (smaller trucks without a separate trailer). The type of truck driven depends on the route selected. Straight trucks, for example, are used primarily for delivery to schools because they are smaller and easier to maneuver on school grounds. Commercial driver's licenses (CDLs) are required for all driver positions.

Because ice cream distribution is seasonal, with more ice cream delivery in the warmer months, drivers sometimes move between the different routes. At the time of the hearing, three drivers who bid for ice cream routes were driving milk routes because of milk demand. Other than the product delivered, ice cream and milk drivers perform the same work, using similar equipment and skills. When ice cream drivers are assigned to milk routes, they will report as milk drivers do to the Melody Farms Industrial Road facility to clock in and to the Country Fresh Enterprise Drive facility to retrieve the loaded milk trailer.

[7] Peddle runs involve smaller accounts. Based on his familiarity with the customer and its inventory needs, the driver creates the order for the customer. "Call-in" deliveries involve bigger stores, such as supermarkets, that place their own orders.

Organization and Supervision

Under the new, combined operation, management for both Country Fresh and Melody Farms has been centralized. The Melody Farms general manager, Rodney George, was chosen to head the new operation as general manager. He named his management team. George has since been replaced by Jerry Shannon. Human resources, accounting, sales, customer service, and some information systems staff are located at the Melody Farms Industrial Road offices.

Milk drivers and milk plant employees now work in two separately managed departments: the distribution department and the milk plant department, respectively. Both departments are located at the Country Fresh-Livonia facility. The distribution department is managed by a single distribution manager, whose subordinates include four milk distribution supervisors and one ice cream distribution supervisor. These supervisors are a combination of former Country Fresh and Melody Farms supervisors. The milk plant department is headed by Mark Pettit, plant manager-milk. Roy Konieczny, plant manager-ice cream, and the ice cream distribution manager work at the Melody Farms Detroit location.

Labor Relations

Terri Moore, who had been employed by Melody Farms, is director of human resources, and is responsible for both Country Fresh-Livonia and Melody Farms. Until the issue of unit consolidation is resolved, the units continue to be paid separately and clock in separately. Driver pay and benefits are somewhat different for the two units based on the differences in their current collective bargaining agreements. Route drivers under the Intervenor's contract earn from $11.50 per hour for a newly hired Class B driver to $17.50 per hour for a Class A route driver with three or more years' seniority. The Petitioner's route drivers earn $17.00 per hour. Under incentive pay and awards programs, the Intervenor's drivers can earn several thousand dollars per year more than Petitioner's drivers. Drivers in each unit have health benefits and 401(k) programs, though these programs differ somewhat.

Analysis

This case does not involve a traditional accretion issue in which a "relatively small group" of employees with "no separate identity" is added to an existing unit. ***Safety Carrier, Inc.***, 306 NLRB 960, 969 (1992). Rather, Dean Foods has consolidated two separate employers in which the units have been represented by different unions.

In consolidation cases in which different unions have historically represented the two groups of employees and neither is sufficiently predominant, a question concerning representation exists. In such a case, the Board will not apply its accretion policy and impose one of the two unions on the employees. ***Martin Marietta Chemicals,*** 270 NLRB 821, 822 (1984). In ***Martin Marietta***, the separate identities of the two units were "obliterated." ***Id.*** Here, if the separate identification of the two units has not been obliterated, it has at least been blurred. As in ***Martin Marietta***, the consolidation of the Country Fresh-Livonia and Melody Farms facilities has created a new operation, with common management and administration, and centralized control of labor relations. The milk drivers who formerly worked for different organizations now report to the same facility, work under the same supervisors, and perform the same work using similar equipment and skills.

The Petitioner is attempting to accrete only a portion of the Intervenor's unit into its unit. Its primary argument for doing so relies on accretion through predominance: the Intervenor's unit is smaller; therefore, the smaller unit has been accreted. Board law, however, does not rely strictly on the numbers. The Board has found accretion where two units of almost equal size have been merged, "even when the represented employees barely constituted a majority of the combined work force." ***Central Soya Co., Inc.***, 281 NLRB 1308, 1309. In that case, however, the Board emphasized that it was "critical" that the workers being accreted were unrepresented. ***Id.***, at 1310. Where both units are represented, the Board's decision in ***Martin Marietta***, not its reliance on the "bare" majority in ***Central Soya***, applies. ***Special Machine and Engineering, Inc.***, 282 NRLB 1410, 1410 (1987).

In support of its accretion argument, one case the Petitioner cites is ***Boston Gas Co.***, 235 NLRB 1354, 1355 (1978) (***Boston Gas II***). In that case, 88 employees from a bargaining unit represented by one union were transferred into a larger unit of 183 employees represented by another union. The Board found that accretion of the smaller unit of employees into the larger unit was appropriate. In doing so, however, the Board found that no new operation was created. Rather, existing employees of the same employer in the smaller unit were merely transferred into the larger unit. An earlier ***Boston Gas*** case, ***Boston Gas Co.***, 221 NLRB 628 (1975) (***Boston Gas I***), is more on point. In ***Boston Gas I***, the employer purchased two companies and combined the customer service departments, consisting of 34 and 38 employees, respectively. Those employees were in separate bargaining units represented by two different unions. While the employees performed the same work after the consolidation as before, they now worked for a new employer using that employer's policies and procedures. The Board found that a new operation had been created and, therefore, a question concerning representation existed and accretion was not appropriate. In ***Martin Marietta***, the Board followed its ***Boston Gas I*** decision. There, the numerical comparison of the two units was 159 and 93. Another case involving a consolidation of operations in which the Board found no accretion, but rather a question concerning representation, had numbers very similar to the case herein. ***Panda Terminals, Inc.***, 161 NLRB 1215 (1966). There, the consolidation of separate freight handling operations of two employers resulted in the merger of bargaining units represented by different unions. One unit consisted of 130-

150 employees; the other had 45-50 employees. See also, ***National Carloading Corp.***, 167 NLRB 801, 802 (1967)(where consolidation of two terminals resulted in the merger of three clerical units consisting of 34, 12 and 8 employees. A question concerning representation, not accretion, was found.) Thus, I find the size of the Petitioner's unit is not sufficiently predominant to permit accretion.

In addition, Petitioner is seeking to carve up the Intervenor's long-standing existing unit of ice cream and milk drivers. It attempts to do so while at the same time maintaining the position that its own production, maintenance and driver unit remains intact. As noted, no representation petition has been filed. Accordingly, I make no finding as to whether either or both the Petitioner's and Intervenor's units are still appropriate. However, Petitioner's seeking to bifurcate Intervenor's unit while maintaining its own unit provides further support for finding that accretion is not appropriate. If, as Petitioner must contend, the ice cream drivers no longer have a community of interest with the milk drivers, it could arguably follow that the production and maintenance employees also lack a community of interest with the milk drivers. Consideration of those issues, however, would not be appropriate for this unit clarification proceeding.

Conclusion

Based upon the foregoing and the record as a whole, I conclude that consolidation of operations of Country Fresh and Melody Farms in the Detroit area has created a question concerning representation regarding the milk drivers in question. Thus, accretion of the milk drivers from Melody Farms into the bargaining unit of production and maintenance employees and drivers from Country Fresh is not appropriate.

Accordingly, **IT IS ORDERED** that the Petitioner's requested clarification is denied, and the petition is dismissed.[8]

Dated at Detroit, Michigan, this 2nd day of December 2004.

"/S/[Stephen M. Glasser]."

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board
Seventh Region
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[8] Under the provision of Section 102.67 of the board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street NW, Washington, D.C. 20570**. This request must be received by the Board in Washington by **December 16, 2004**.